IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
August 17, 2007 Session

LANCE GRIGSBY ET AL. v. CITY OF PLAINVIEW

Appeal from the Circuit Court for Union County
No. 2480 John McAfee, Judge

No. E2006-02269-COA-R3-CV - FILED OCTOBER 30, 2007

Lance Grigsby and Lori Grigsby ("Owners") purchased a convenience store in Plainview formerly owned by Wanda Cherry Evans ("Manager"). Owners were the successful bidder at a bankruptcy auction sale. At the time of the purchase, Manager was the only person in Plainview with a valid beer permit, having been "grandfathered in" when Plainview incorporated and banned the sale of beer within its city limits. Owners claim that, in purchasing Manager's store, they relied upon representations from City of Plainview ("City") that they would be able to sell beer under Manager's permit, provided they hired her as the store's manager, which they did. Several months later, City revoked Manager's beer permit, thus eliminating Owners' ability to sell beer at their store. In a previous lawsuit, Owners unsuccessfully challenged this revocation. In the instant case, Owners have again sued City, this time claiming that an implied contract was created by City's alleged representations, which Owners claim to have relied upon in making their purchase. The trial court granted City summary judgment, and Owners appeal. The alleged breach of the purported contract is City's revocation of Manager's permit, and Owners already challenged that revocation and failed. They cannot re-try the prior action in the instant case, and there is nothing else in the record to support a claim that the purported contract was breached. Accordingly, we affirm the trial court's grant of summary judgment to City.

Tenn. R. Civ. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed; Case Remanded

CHARLES D. SUSANO, JR., J., delivered the opinion of the court, in which D. MICHAEL SWINEY and SHARON G. LEE, JJ., joined.

Michael G. Hatmaker, Jacksboro, Tennessee, for the appellants Lance Grigsby and Lori Grigsby.

Jon G. Roach, Knoxville, Tennessee, for the appellee City of Plainview.

OPINION

Summary judgment is appropriate only if no genuine issues of material fact exist and if the undisputed material facts entitle the moving party to a judgment as a matter of law. Tenn. R. Civ. P. 56.04; ***Byrd v. Hall***, 847 S.W.2d 208, 211 (Tenn. 1993). We must view the evidence in the light most favorable to the nonmoving party – in this case, Owners – and we must draw all reasonable inferences in favor of that party. ***Id.*** at 210-11. The facts expounded herein are drawn from Owners' complaint and the parties' statement of undisputed facts.

The City of Plainview was incorporated in 1992, whereupon the City, by ordinance, promptly prohibited the sale of beer within its limits. However, anyone who held a valid beer permit previously issued by Union County was "grandfathered" in. There was only one such person: Manager. Between 1992 and 2002, Manager owned and operated a convenience store, the Luttrell Spur, and sold beer as authorized by her permit. In 2002, however, she and her company filed for bankruptcy.[1] A bankruptcy auction was thereafter scheduled.

On September 20, 2002, in anticipation of the auction, the City's mayor sent a letter to its attorney asking his legal opinion as to the status of Manager's beer permit as it related to the pending transfer of ownership. The attorney's reply to the mayor's letter is attached to Owners' complaint. It reads in pertinent part as follows:

> You have asked whether the proposed transfer of the Spur Station property would result in the transfer of the Beer Permit. The short answer is no.
>
> It is clear from state law that beer permits may be issued to persons who are not the owners of the real estate. In fact, that may be the rule rather than the exception. It is my understanding that the beer permit is issued to an individual. Based on that, it is my opinion that so long as the individual entity to whom the permit was issued continues to hold the permit and operate under that permit that there is no transfer despite the change in ownership of the property since the permit is issued to the individual or entity at that location. Thus, the change in ownership would have no effect on the permit itself. . . .

Five days later, possibly relying upon the contents of the attorney's letter to the mayor, the Furrow Auction Company announced, according to Owners' complaint, "that the location would be sold with an active beer license provided the buyer retained Wanda Cherry Evans as manager; i.e., if Wanda Cherry Evans remained in management capacity with the purchaser, the permit would remain

[1] Manager formerly did business under the auspices of the East Tennessee Pioneer Oil Company. The Luttrell Spur was an asset of this company.

in place and effect." Owners, relying on this announcement and the attorney's letter, purchased the property for $220,500.

Owners renamed the store the All American Market and Deli, hired Manager to manage it, and began doing business there shortly after the auction. In December 2002, Manager was notified that she needed to file for renewal of her beer permit. She did so, and on February 20, 2003, City revoked her permit.

According to the Court of Appeals' opinion in the related case of ***Grigsby v. City of Plainview***, 194 S.W.3d 408, 409 (Tenn. Ct. App. 2005), Owners sought review of the beer board's revocation of Manager's permit in the Chancery Court for Union County on July 3, 2003. By law, under T.C.A. § 27-9-102, Owners had 60 days from the time of the "filing" of the revocation to seek a writ of certiorari from chancery court. We held in ***Grigsby*** that the record did not establish when City had "filed" its revocation, and we remanded for further proceedings. ***Id.*** at 414. On remand, the trial court subsequently clarified the record, announced that the revocation had been "filed" on or about March 15, 2003, and granted City summary judgment on the basis that Owners' petition for the writ some 110 days later was not timely. No appeal was taken from that order. On oral argument in the instant case, Owners' attorney conceded that the appeal in the previous case was "not timely."

Owners took a different tack in the instant case. Rather than contesting the permit revocation outright, as they had done unsuccessfully in the previous case,[2] Owners instead rely on a breach of contract claim against City. The complaint states in part as follows:

> That on the date of the public auction, and at the time of same, prior to the bidding process, public announcement was made by the auctioneer that the location would be sold with an active beer license provided the buyer retained Wanda Cherry Evans as manager; i.e., if Wanda Cherry Evans remains in management capacity with the purchaser, the permit would remain in place and effect.
>
> That the announcement aforesaid was consistent with representations likewise made by Defendant.
>
> That attached hereto as Exhibit 3 is a copy of letter dated September 20, 2002, from Jon Roach, attorney for Defendant City of Plainview, and addressed to the Mayor of Defendant.
>
> That the implication of the attached Exhibit 3 is in fact consistent with the announcements made at the public auction as set out in paragraph numbered 16 above.

[2] Owners filed their complaint the instant case on September 24, 2005, approximately one month before the final judgment in the previous case.

> That, relying on the announcements and representations of Defendant as aforesaid, Plaintiffs Lance Grigsby and Lori Grigsby on September 25, 2002, purchased the Luttrell Spur property as located above for the sum of $220,500.00.
>
> * * *
>
> That the Plaintiffs detrimentally relied on the representations of Defendant, and purchased the business as aforesaid.
>
> That an implied contract existed between Plaintiffs and Defendant that the Plaintiffs would be permitted to sell alcoholic beverages at the business they purchased.
>
> That Defendant has breached the contract by cancelling or revoking the permit upon which Plaintiffs were told they would be permitted to operate, and further breached the contract by refusing to issue a beer permit in the names of Plaintiffs.

(Paragraph numbering in complaint omitted).

The trial court granted summary judgment on the ground that an implied contract claim against City under these circumstances was an improper intrusion upon the City's police power. Owners appeal.

We do not reach the police power question because we believe the case can be decided on much more straightforward grounds. Simply put, the record makes clear that Owners have not made out a valid claim for breach of contract when considering the undisputed material facts and reasonable inferences from those facts in their favor. We can affirm a trial court's judgment when it has reached the right result even though we rely upon a reason different from that relied upon by the trial court. ***Continental Cas. Co. v. Smith***, 720 S.W.2d 48, 50 (Tenn. 1986).

Owners' claim of breach of contract has two prongs. The second prong claims that City "breached the contract by refusing to issue a beer permit in the names of Plaintiffs." This assertion is unsupported by anything in the record. Even the most generous reading of the letter from City's attorney does not support the conclusion that City promised to issue a beer permit to *Owners*.

That leaves only the first prong: the claim that City "breached the contract *by cancelling or revoking the permit* upon which Plaintiffs were told they would be permitted to operate." (Emphasis added). This is nothing but a re-characterization, under a new label, of the gravamen of Owners' previous lawsuit against City alleging wrongful revocation of Manager's permit. The mere fact that the permit was revoked – for reasons not disclosed in the record – cannot, standing alone, establish that City breached the purported contract. Certainly, as Owners' attorney conceded at oral argument

in the instant case, under no interpretation of City's representations was City contractually obligated to let Manager keep her license indefinitely "no matter what she did." The *reason* for the revocation is significant. The revocation would only be a breach of contract if (1) City had agreed that Owners could sell beer on Manager's permit so long as she managed the store, and (2) the revocation was based purely upon the fact that she was doing exactly that. This is precisely what Owners alleged in the earlier lawsuit. Simply put, the Owners are trying to circumvent the previous final judgment. This they cannot do. The final judgment in the earlier case is *res judicata* barring further litigation of that cause of action.

A claim of *res judicata* has four elements. It must be proven: "(1) that the underlying judgment was rendered by a court of competent jurisdiction; (2) that the same parties were involved in both suits; (3) that the same cause of action was involved in both suits; and (4) that the underlying judgment was on the merits." ***Lee v. Hall***, 790 S.W.2d 293, 294 (Tenn. Ct. App. 1990). The first two elements are clearly present in the instant case. The third element is established by our holding above: although the earlier suit called into question the legality of the revocation, whereas the instant case sounds in contract, both actions challenged the propriety of the action taken by City, and the alleged breach of contract in the instant case is grounded in the same conduct that formed the basis for the earlier suit. Finally, with regard to the fourth element, it is well-established that "[t]he rule of res judicata is applicable to former judgments which determined the question of statute of limitations." ***Porter v. Daniels***, No. 88-276-II, 1989 WL 14219, at *3 (Tenn. Ct. App. M.S., filed February 22, 1989). Such a judgment "constitutes a decision on the merits. . . ." ***Id.*** The same rule was applied to a failure to timely file under T.C.A. § 27-9-102 in ***Johnson v. Kear***, No. 126, 1987 WL 5964, at *2 (Tenn. Ct. App. E.S., filed February 3, 1987). More generally, it has been stated that,

> [i]n order that a judgment or decree should be on the merits, it is not necessary that the litigation should be determined "on the merits," in the moral or abstract sense of these words. It is sufficient that the status of the action was such that the parties might have had their suit thus disposed of, if they had properly presented and managed their respective cases. . . .

Madyun v. Ballard, 783 S.W.2d 946, 948 (Tenn. Ct. App. 1989) (quoting ***Parkes v. Clift***, 77 Tenn. 524, 531-32 (1882)). We therefore hold that all four elements of *res judicata* are present.[3]

Because Owners' only viable theory of a breach of contract in the instant case is identical to their theory of recovery in the previous lawsuit, which was dismissed with prejudice, this action is barred by *res judicata*.

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[3]The parties did not argue *res judicata* on the appeal of the instant case. However, City raised it in its motion for summary judgment: "The Plaintiffs' claims of alleged misrepresentation have previously been adjudicated in *Lance Grigsby and Lori Grigsby v. City of Plainview and Furrow Auction Company*, Union County Circuit Court No. 2332 and thus, are barred under the doctrine of res judicata." This is sufficient to satisfy the requirement that *res judicata*, as an affirmative defense, must be specifically raised at trial. *See* ***Dye v. Murphy***, No. W2003-01521-COA-R3-CV, 2004 WL 350660, at *2 (Tenn. Ct. App. W.S., filed February 25, 2004).

The judgment of the trial court is affirmed. Costs on appeal are taxed to the appellants, Lance Grigsby and Lori Grigsby. This case is remanded to the trial court for collection of costs assessed there, pursuant to applicable law.

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CHARLES D. SUSANO, JR., JUDGE